

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 555**

---

**Introduced by Senator Kehoe**

February 27, 2009

---

An act to add Section 1240.055 to the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 555, as amended, Kehoe. Eminent Domain Law: conservation easement.

Existing law authorizes various agencies to acquire land for purposes related to conservation. Existing law provides for a conservation easement to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. Existing law establishes procedures for the independent appraisal review of land to be acquired for conservation and establishes a conservation easement registry. Existing law prohibits, with a specified exception, conservation lands from being sold to another owner or having possession and control transferred to another agency, unless specified actions occur.

The California Constitution permits private property to be taken or damaged for public use only when just compensation is paid. The Eminent Domain Law prescribes how that constitutionally authorized power may be exercised and permits that exercise only for a public use.

This bill would revise the Eminent Domain Law to prohibit a person from acquiring a conservation easement by eminent domain, unless specified procedures are followed. The bill would require the person to give the holder of the easement notice and an opportunity to state any objections to the proceedings.

To the extent that this bill would impose new duties on a local governmental entity, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1240.055 is added to the Code of Civil  
2 Procedure, to read:  
3 1240.055. (a) As used in this section, the following terms have  
4 the following meanings:  
5 (1) “Conservation easement” means a recorded conservation  
6 easement as defined in Section 815.1 of the Civil Code.  
7 (2) “Person” means any person authorized to acquire property  
8 by eminent domain.  
9 (3) “Property appropriated to public use,” as used in Article 6  
10 (commencing with Section ~~1240.410~~) 1240.510) and Article 7  
11 (commencing with Section 1240.610), includes a conservation  
12 easement.  
13 (b) A person authorized to acquire property for a particular use  
14 by eminent domain shall not exercise the power of eminent domain  
15 to acquire ~~for public use, for public use~~, property that is subject to  
16 a conservation easement, except as provided in this section.  
17 (c) When it appears that property subject to a conservation  
18 easement may be required for a public use, the person seeking to  
19 acquire the property shall, not less than ~~30 days prior to the date~~  
20 ~~it intends to initiate eminent domain proceedings~~ 90 days prior to  
21 *the hearing on the resolution of necessity*, provide written notice  
22 to the entity or organization that holds the conservation easement  
23 of its intention to initiate eminent domain proceedings to acquire  
24 property that is subject to a conservation easement.  
25 (1) The notice shall:

1 (A) Provide a general description, in text or by diagram, of the  
2 property subject to a conservation easement that is proposed for  
3 acquisition.

4 (B) Provide a description of the public use or improvement that  
5 the person is considering for the property.

6 (C) Provide an opportunity for the holder of the conservation  
7 easement to consult with the person seeking to acquire the property  
8 prior to commencement of eminent domain proceedings.

9 *(D) Inform the easement holder that, upon receipt of the notice,*  
10 *the easement holder shall inform the person intending to initiate*  
11 *eminent domain proceedings of the name and address of any public*  
12 *entity that provided funds for the purchase of the easement or*  
13 *required it as a condition of approval.*

14 (2) Within 30 days after receipt of notice from the person  
15 seeking to acquire the property, the holder of the conservation  
16 easement may state in writing its objections to the acquisition,  
17 including identifying any potential conflict between the public use  
18 proposed for the property and the particular characteristics of the  
19 conservation easement.

20 (3) The person intending to acquire the property subject to a  
21 conservation easement shall, within 30 days after receipt of  
22 comments from the holder of the conservation easement, respond  
23 in writing to the comments.

24 (d) If the conservation easement was purchased with state or  
25 local public funds or if a public entity required the conservation  
26 easement as a condition of project approval, the easement holder  
27 upon receipt of the notice pursuant to paragraph (1) shall inform  
28 the person intending to initiate eminent domain proceedings of the  
29 name and address of any public entity that provided funds for the  
30 purchase of the easement or required it as a condition of approval.

31 ~~The easement holder~~ *person intending to initiate eminent domain*  
32 *proceedings* shall provide to the public entity that provided funds  
33 or required the easement the same notice described in paragraph  
34 (1) of subdivision (c) and the public entity shall have 30 days after  
35 receipt of notice from the ~~easement holder~~ *person intending to*  
36 *initiate eminent domain proceedings* to state in writing its  
37 objections to the acquisition. This provision shall not apply if there  
38 are no recorded documents that evidence, and the easement holder  
39 has no record or independent knowledge of, the identity of the  
40 public entity that provided funds to purchase the conservation

1 easement or that required the conservation easement as a condition  
2 of approval.

3 (e) In any eminent domain proceeding to acquire property  
4 subject to a conservation easement:

5 (1) The provisions of Section 815.2 of the Civil Code shall  
6 apply.

7 (2) The holder of the conservation easement shall be named as  
8 a defendant, as set forth in Section 1250.220, may appear in the  
9 proceedings as set forth in Section 1250.230, and shall have all  
10 the same rights and obligations as any other defendant in the  
11 eminent domain proceeding.

12 ~~(g)~~

13 ~~(f) No person shall initiate eminent domain proceedings against~~  
14 ~~property subject to a conservation easement unless the following~~  
15 ~~findings are made:~~

16 ~~(1) The location is not based primarily on a consideration of the~~  
17 ~~lower cost of acquiring the property.~~

18 ~~(2) There is no other land within the vicinity on which it is~~  
19 ~~reasonably feasible to locate the public improvement.~~

20 (f) The holder of a conservation easement is an owner of  
21 property entitled to compensation if that property is taken, pursuant  
22 to Section 1263.010. Compensation for the taking of all interests  
23 in the property subject to a conservation easement shall be no less  
24 than the compensation paid for the property if it were  
25 unencumbered by that conservation easement.

26 (g) *This section shall not apply if the requirements of Section*  
27 *1348.3 of the Fish and Game Code apply.*

28 SEC. 2. If the Commission on State Mandates determines that  
29 this act contains costs mandated by the state, reimbursement to  
30 local agencies and school districts for those costs shall be made  
31 pursuant to Part 7 (commencing with Section 17500) of Division  
32 4 of Title 2 of the Government Code.